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**IN THE  
COURT OF APPEALS OF INDIANA**

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STEVEN SIMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A02-0605-CR-383
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE HOWARD SUPERIOR COURT  
The Honorable Randy Hainlen, Temporary Judge  
Cause No. 34D01-0410-FA-331

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**September 29, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Chief Judge**

Steven Sims appeals the sentence he received for child molesting<sup>1</sup> as a Class C felony claiming the trial court improperly enhanced his sentence and that his sentence is inappropriate based on his character.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

The State charged Sims with child molesting as a Class A felony. Sims pled guilty to one count of child molesting as a Class C felony. Pursuant to an open plea agreement, the trial court found Sims's two prior convictions and violation of probation as aggravators outweighing the mitigator of his guilty plea. The trial court sentenced Sims to seven years in the Department of Correction with five years to be executed.

### **DISCUSSION AND DECISION**

A sentence may be enhanced on the basis of prior convictions, consistent with the Sixth Amendment. *Williams v. State*, 838 N.E.2d 1019, 1021 (Ind. 2005) (citing *Apprendi v. New Jersey*, 530 U.S. 466, 490-91 (2000)). Except for prior criminal history, any aggravating circumstances used to enhance a sentence beyond the [advisory] term must be submitted to a jury and proven beyond a reasonable doubt. *Smylie v. State*, 823 N.E.2d 679, 682 (Ind. 2005) *cert. denied*. In order for a trial court to impose an enhanced sentence, it must identify all relevant aggravating and mitigating factors, relate those factors to the facts of the case, and demonstrate that the factors have in some way been balanced. *Johnson v. State*, 837 N.E.2d 209, 216 (Ind. Ct. App. 2005).

Sims first contends that the trial court erred in enhancing his sentence without explanation. During sentencing, the trial court stated:

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<sup>1</sup> See IC 35-42-4-3.

The court will find that there are aggravating factors in this matter in that Mr. Sims has two prior felony convictions according to the probation report and that you have violated the terms of your probation. The court finds mitigating factors in your plea of guilty here today which would save the victim from having a trial. The court will find that the aggravating factors outweigh the mitigating factors . . .

*Tr.* at 9. Sims's two prior felony convictions were for auto theft and drug possession. Sims did not receive the maximum sentence and also had two years suspended. We find that the trial court adequately explained its sentence.

Sims also contends his sentence was inappropriate but makes no argument beyond that which he advanced in challenging the trial court's sentencing statement. As we said in *Johnson*:

We have already held that the trial court's sentencing statement supports the imposition of enhanced . . . sentences, and because [the Appellant] has failed to make a cognizable argument regarding the nature of his offenses and his character, he has waived any challenge to the appropriateness of his sentence. Ind. Appellate Rule 46(A)(8)(a).

837 N.E.2d at 217.

Affirmed.

SHARPNACK, J., and MATHIAS, J., concur.